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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,746	01/12/2000	JEAN-GERARD SAINT-RAMON	6005-4018	5467

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MORGAN & FINNEGAN
345 PARK AVENUE
NEW YORK, NY 10154

EXAMINER
DEAK, LESLIE R

ART UNIT	PAPER NUMBER
3762	21

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/462,746

Applicant(s)

SAINT-RAMON ET AL.

Examiner

Leslie R. Deak

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,735,401 to Cassou et al in view of 5,391,163 to Christine et al. Cassou discloses a pouch comprised of two thermoplastics fixed together with a weld defining two shorter portions and a longer portion (column 3, FIG 1). Further, the bag features an interruption in the weld on one of the shorter sides wherein the interruption in the weld defines a flared funnel area that is closed on the outer end by a weld (see FIG 1). The flared interruption in the weld functions as both the filler passage and the drain passage, comprising a flared drain end. Cassou further discloses that the pouch or sachet disclosed in his invention contain animal semen (see columns 1-2). Animal semen as a broad category includes pig sperm. Cassou fails to disclose a second interruption on the opposite end of the first interruption in the weld. However, Christine discloses a pouch made of thermally pressed thermoplastics with an opening on opposing ends of the pouch (see FIG 1). The pouch is joined by heat seals and the top side comprises fused portions 28 and 36 that are interrupted by an opening or gap (see column 3, lines 10-32, FIG 1). The openings comprise a top seam 34 provided without a seal, which may be used for filling the pouch and sealing it along line 34. The bottom

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opening provides a channel 36 between the heat seals, some of which are peelable (see column 3, lines 34-50). Therefore, it would have been obvious to one of ordinary skill in the art to add another opening to the pouch disclosed by Cassou, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Furthermore, it would have been obvious to add a second opening to the Cassou pouch in order to allow for separate ingress and egress passages, as taught by Christine. It is further obvious to include pig sperm in the modified Cassou/Christine device since Cassou discloses that the pouches of his invention contain animal semen therein, and a person of ordinary skill in the art would reasonably interpret the disclosure of animal semen to include pig sperm. Further, pig semen is not regarded as a limitation that further defines the structure of the claimed pouch, and the pouch of the Cassou device would clearly be capable of holding pig sperm.

3. Claims 2-4, 8-10, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassou et al in view Christine, further in view of US 2,648,463 to Scherer. The modified Cassou device discloses the pouch as claimed with the exception of a peelable seal. It is the position of the examiner that any seal between two welded materials is "peelable," that is *capable* of being peeled. In the alternative, however, Scherer discloses a plastic container for packaging solids or liquids with areas of lesser tensile strength in the seal which are breakable when pulled apart, creating a peelable area for opening the container (column 1, lines 22-35). The container, comprised of opposing sheets of thermoplastic material (column 2, lines 24-28), forms a

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watertight seal for the contents until opened (column 1, lines 46-50). The seal may be formed on either of the two ends of the container (column 3, lines 18-35). Further, Scherer illustrates that the peelable seals are not the same length (see reference characters 14 and 15 in FIG 6), indicating that the thermoplastic materials are offset from one another. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of invention to move the thermoplastics to an offset position, since it has been held that rearranging parts of an invention involves only routine skill in the art. Still further, applicant's claim drawn to the offset measuring 2-3mm, it would have been obvious to one of ordinary skill in the art to make the offset an appropriate distance, since where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Scherer discloses the use of polymers and copolymers to create the peelable seal, which includes a wax polymer (column 3, lines 13-16). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to equip the flexible container disclosed by Cassou with the peelable openings disclosed by Scherer in order to create a container with a liquid-tight seal that may be easily opened by the user.

With regard to applicant's claims drawn to the shape of the sealing area, it would have been an obvious matter of design choice to form the sealable area into various geometric shapes since applicant has not disclosed that the triangular or v-shaped sealing area solves any stated problem or is for any particular purpose, and it appears that the invention would perform equally well with a sealing area of any shape.

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4. Claims 11-15 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassou et al in view of Christine, further in view of US 4,804,363 to Valeri. The modified Cassou container discloses the invention as claimed with the exception of providing a marking area. Marking areas and identifiers are well-known in the art of medical instruments and containers, as taught by Valeri. Valeri discloses an apparatus for storing blood, a biological fluid, which comprises identification marking 64 that is affixed to the bag 41. The identifier may take the form of a label that sets forth details of the source of biological fluid contained therein. The user may place any other sort of marking on the label, which includes color markings (column 4, lines 29-37). As for applicant's claim to a marking surface on the container, any surface is capable of being marked upon, and Valeri's invention includes a surface upon which an identification marking is placed, rendering that surface a marking area. With regard to applicant's claims drawn to the marking's function to identify pig breeds, the limitation amounts to a recitation of intended use of the bag and the marking. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Therefore, it would have been obvious to one of ordinary skill in the art to provide the sealed container disclosed by Cassou with the identification markings disclosed by Valeri in order to easily identify the nature and contents of the liquid contained therein.

Response to Arguments

5. Examiner apologizes for inadvertently repeating the rejection of the pending claims as obvious over Cassou and Lee. As such, the present rejection is made nonfinal.

6. In response to applicant's argument that the Christine device is not large enough to receive a filler tube, the limitation drawn to the filler tube is merely a recitation of the intended use of the device. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

7. In response to applicant's argument that the Cassou device is used for a different purpose and has a different mode of employment than the instantly claimed invention, it is noted that the Cassou reference discloses the apparatus as claimed. The fact that it discloses additional components or a different mode of use does not make the structural limitations different from the instant invention. See MPEP 2145.

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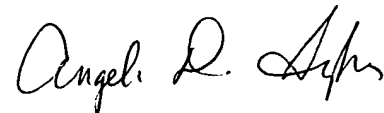
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 703-305-0200. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

lrd
February 12, 2004



**ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
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